IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

EARNEST CLARDY, NADINE CLARDY,
Guardian for Kenneth Clardy,
and KENNETH CLARDY — PLAINTIFFS

vs. — Civil Action No. 1:95cv135-D-D

ATS, INC. EMPLOYEE WELFARE
BENEFIT PLAN and ADVANCED
ADMINISTRATIVE COMPANIES — DEFENDANTS

MEMORANDUM OPINION

Presently before the court is the motion of the plaintiffs for the entry of partial summary judgment on their behalf. Finding the motion of the plaintiffs is not well taken, the court shall deny it.

Factual Summary[1]

This court has previously addressed the factual background in this case, when this court explained:

> The plaintiff Kenneth Clardy received serious injuries as a result of an automobile crash which occurred on August 19, 1993. Another individual, while pursued by law enforcement officials, crashed the automobile he was driving at the time into a utility pole. Kenneth was a passenger in this vehicle. As a result of his injuries, Kenneth Clardy incurred substantial hospital and related medical bills. The plaintiffs Earnest and Nadine Clardy made a claim against their insurer, ATS, Inc. Employee Welfare Benefit Plan ("ATS"), for payment of these medical expenses. Both sides

[1] In ruling on a motion for summary judgment, the court is not to make credibility determinations, weigh evidence, or draw from the facts legitimate inferences for the movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Rather, the evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor. Anderson, 477 U.S. at 255. While the court repeats its recitation of facts from an earlier memorandum opinion [illegible] favor of the plaintiffs, the defendants have presented the court with any evidence which [illegible] the non-movant's status because [illegible] this court's summary [illegible] there are few factual disputes in this cause.

concede that the ATS Employee Welfare Benefit Plan is governed by ERISA, 29 U.S.C. § 1001 et seq., and that Advanced Administrative Companies is the administrator of this ERISA plan. ATS denied the plaintiffs' claim for coverage. The plaintiff Kenneth Clardy, through his Guardian, also instituted an action against the driver of the vehicle for his role in producing his injuries. That action was settled by the parties to that action for the amount of $105,000.00 on May 26, 1994. The bulk of this amount consisted of the policy limit of the driver's applicable insurance policy, $100,000.00. From that policy amount, $33,333.34 was paid to Kenneth Clardy, $33,333.33 was paid to the plaintiff's attorney as his fee, and the remaining $33,333.33 was paid to the Regional Medical Center in Memphis, Tennessee ("The Med") in settlement of its claim against the defendants in that action.

The plaintiffs later filed suit against ATS in the Chancery Court of Lee County, Mississippi, on November 28, 1994, seeking the payment of medical expenses for Kenneth Clardy under their employee benefit plan. The defendants subsequently removed the action to this court on April 25, 1995. The terms of the plaintiffs' benefit plan provide in relevant part:

> 11. Right of Reimbursement: If a covered person is injured through the act or omission of another person, the Plan shall provide the benefits only on condition that the employee shall agree in writing:
>
> > a. To reimburse the Plan to the extent of benefits provided, immediately upon collection of damages by him, whether by legal action, settlement, or otherwise, and including but not limited to motor vehicle insurance;
> >
> > . . .
> >
> > b. The employee's agreement is binding on his covered dependents also.

On February 14, 1994, the plaintiffs Earnest and Nadine Clardy executed a written agreement to reimburse ATS for benefits, subject to a reasonable cost of collection. This agreement was not signed by Kenneth Clardy, nor was it signed on his behalf with approval of a state court Chancellor.

Clardy v. A.T.S., Inc., 921 F. Supp. 394, 396 (N.D. Miss. 1996)

("Clardy I") (footnotes omitted). In Clardy I, the undersigned ultimately concluded that ERISA did not preempt the rule of Mississippi law that state Chancery Court approval is required before an assignment of a minor's right to litigation proceeds is valid. Clardy I, 921 F. Supp. at 399-400. As a result, this court found that the defendants were not contractually entitled to a set-off of the settlement proceeds from Kenneth Clardy's previous state court action. Id. Further, this court declined to equitably grant the defendants a right of subrogation. Id. at 400. The plaintiffs have now filed their own motion for summary judgment, and request that this court enter judgment in their favor. The defendants have responded to the plaintiffs' motion and the matter is ripe for determination.

Discussion

I. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party seeking summary judgment carries the burden of demonstrating that there is an absence of evidence to support the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). Once a properly supported

motion for summary judgment is presented, the burden shifts to the non-moving party to set forth specific facts showing that there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L.Ed.2d 202 (1986); Brothers v. Klevenhagen, 28 F.3d 452, 455 (5th Cir. 1994). "Where the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L.Ed.2d 538 (1986); Federal Sav. & Loan Ins. v. Krajl, 968 F.2d 500, 503 (5th Cir. 1992). The facts are reviewed drawing all reasonable inferences in favor of the party opposing the motion. Matagorda County v. Russel Law, 19 F.3d 215, 217 (5th Cir. 1994).

II. THE MOTION

. Merits of the Plaintiffs' Claim

The plaintiffs have moved for summary judgment on their claims against the defendants in this case. While they have submitted a motion and an itemization of facts in support of their motion, the plaintiffs have not submitted a memorandum of authorities as required by Uniform Local Rule 8(d). Instead, the plaintiffs rely on the summary judgment briefs previously submitted in the case with the defendants' prior motion.

The defendants counter that in light of this court's previous ruling, the plaintiffs are barred from collecting any monies from

the plan until they provide the plan with a "valid" reimbursement agreement. Defendants' Memorandum Brief, p. 4 ("[T]he plan has not been provided with a valid reimbursement agreement. Accordingly, the Plan is not obligated to pay any sums to Plaintiffs under the clear contractual terms of the policy as well as under equitable principles.") (emphasis in original). When the court looks to the policy provisions in question, however, the undersigned notes that there is no requirement that the employee provide a "validly binding" subrogation agreement as against any dependents before the plan will pay claims. Again, the relevant provision states:

> 11. Right of Reimbursement: If a covered person is injured through the act or omission of another person, the Plan shall provide the benefits only *on condition that the employee shall agree in writing*:
>
> a. *To reimburse the Plan* to the extent of benefits provided, immediately upon collection of damages by him, whether by legal action, settlement, or otherwise, and including but not limited to motor vehicle insurance; and
>
> . *To provide the Plan with an Assignment of Benefits*, to the extent of benefits provided by the Plan. The assignment of benefits must be filed with the person whose act caused the injuries, his agent, the court, or the provider of the services.
>
> . *The employee's agreement is binding on his covered dependents also*.

Exhibit "C" to Defendants' Brief (emphasis added). In brief, all that is required under this provision is that the employee: 1) agree to reimburse the Plan, 2) agree to provide the plan with an assignment of benefits, and 3) agree that the employee's first two

agreements are also binding upon his covered dependents. Alternatively, in light of punctuation and the placement of the conjunction "and" between subsections (a) and (b), the section may be read to obligate the employee to make only the first two agreements. Under this reading, subsection (c) would not be an obligatory requirement to be satisfied by the employee, but simply a contractual term seeking to impose vicarious subrogation liability upon covered dependents.

Under either construction, however, it appears to the court that the plaintiffs have complied with this provision to the extent required by the Plan provisions. Of all the plaintiffs, the only "employee" within the meaning of the Plan is the plaintiff Earnest Clardy. He entered into a "Reimbursement Agreement" with the Plan, in which he agreed 1) to reimburse the Plan and to 2) provide the Plan with an Assignment of Benefits. Exhibit "D" to Defendants' Response, Reimbursement Agreement. The court can find no provision in the Plan documents that effectively requires the employee to "provide the Plan with a valid and enforceable reimbursement agreement which is binding against the employee's dependents." That the employee's *agreement* to bind his dependents is not legally valid does not mean that the employee did not *comply with the plan provisions* requiring him to so agree. From what this court can glean from the documents in this case, Mr. Clardy did everything that the defendants asked of him and signed all the documentation

that they presented to him. This contractual provision of the Plan provides no solace for the defendants in this matter.

That the defendants are not contractually entitled to reimbursement from the plaintiff Kenneth Clardy does not mean that there is an absence of genuine issues of material fact as to their right to deny coverage. The original justification for the defendants' denial of coverage was apparently yet another contractual provision. According to the complaint filed in this case, the defendants initially denied coverage under a provision of the policy which excludes from coverage medical expenses resulting from participation in a "felony or illegal activity." Plaintiffs' Complaint, ¶ 5. The only information in the court's possession concerning the precise facts surrounding the accident which gave rise to Kenneth Clardy's injuries in this case derives from the pleadings and motions of the parties in this case. The plaintiffs have not presented any admissible evidence to the undersigned which would demonstrate the absence of a genuine issue of material fact as to the defendants' proffered reason for their denial of coverage. There exist genuine issues of material fact as to the plaintiffs' claims, and the plaintiffs are not entitled to the entry of a judgment as a matter of law.

. Equitable Subrogation

When this cause was previously before the court, the undersigned declined the defendants' invitation to impose

subrogation upon the minor plaintiff Kenneth Clardy by virtue of equitable principles:

> At this juncture of the proceedings, the court declines to . . . wave the wand of equity and create an enforceable contractual obligation under this agreement on behalf of Kenneth Clardy where none exists. But see Striplin, 542 So. 2d at 1104 ("If Cooper Tire is due consideration, it would be based upon its own equitable claim for reimbursement of necessary medical expenses under the doctrine of quasi-contract."). In light of the defendants' "windfall" argument, however, the undersigned simply notes that while this court has ruled the "reimbursement agreement" unenforceable, such does not necessarily mean that the plaintiffs will be entitled to obtain a double recovery for any injuries or damages suffered. Likewise, today's pronouncement by the court does not relieve the plaintiffs of their duty to mitigate damages, and any such mitigation will be considered at the proper time in any assessment of damages awarded in this case.

Clardy I, 921 F. Supp. at 396. In their response to the plaintiffs' motion for summary judgment, the defendants again urge this court to equitably impose upon Kenneth Clardy the obligation to reimburse any insurance payments that they may be required to make in the event the plaintiffs prevail in this case.

As this court has already recognized, courts around the country have used equitable principles in similar cases to bind minors to subrogation agreements entered into by their parents. See, e.g., Peck v. Dill, 581 So. 2d 800, 803-04 (Ala. 1991); Oetinger v. Polson, 885 P.2d 1274, 1277-78 (Kan. Ct. App. 1994); Hagerman v. Mutual Hosp. Ins., Inc., 371 N.E.2d 394, 395-96 (Ind. Ct. App. 1978). The Mississippi Supreme Court has even alluded to the fact that such equitable relief is available. Cooper Tire & Rubber v. Striplin, 542 So. 2d 1102, 1104 ("If Cooper Tire is due

consideration, it would be based upon its own equitable claim for reimbursement of necessary medical expenses under the doctrine of quasi-contract."). Nevertheless, the mere fact that equity may require the enforcement of such contractual obligations upon minors in some instances does not mean that this court is required to grant such relief in every case. Rather, the facts of the individual case must be appropriate for an award of equitable relief:

> In allowing reimbursement of the insurer through the right of subrogation, the trial court must always be guided by principles of equity, for subrogation is an equitable right. In this case, there is nothing to suggest that Blue Cross-Blue Shield was guilty of any bad-faith conduct, and its conduct was never an issue in this case. It appears from the record that Blue Cross-Blue Shield was prompt in making payments and that it paid all medical bills covered by the policy. In addition, Blue Cross-Blue Shield notified [the plaintiff] and his parents of its rights of subrogation on several occasions and made at least two offers to bear its fair share of the legal costs of [the plaintiff's] recovery in his personal injury action.

Hagerman, 371 N.E.2d at 396. Equitable relief is not an entitlement to which the defendants may automatically lay claim when they do not prevail on legal arguments, and the conduct of the defendants is most certainly at issue in this cause. In each reported case where a court has imposed an equitable right of subrogation, the insurer timely paid the claims for coverage when first submitted by the insured. See, e.g., Peck, 581 So. 2d at 803; Oetinger, 885 P.2d at 1275; J.C. Penney Co. v. McNaul, 1988 WL 236362, *1 (W.D. Mo. July 22, 1988). The insurers granted

equitable relief in these cases did not refuse coverage and then assert subrogation rights only when faced with a lawsuit to force the payment of claims. Should the plaintiffs prevail upon their claim that the defendants arbitrarily and capriciously refused coverage and payment of valid claims, this court would be hesitant to find that the defendants should be rewarded for that conduct via equitable principles. United States v. Perez-Torrez, 15 F.3d 403, 407 (5th Cir. 1994) ("[H]e who comes into equity must come with clean hands," and thus "the doors of equity" are closed "to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the" other party."). Under the facts as presently known to the undersigned, this court stands by its prior decision and does not find that the defendants are entitled to the equitable relief of an imposed subrogation right against Kenneth Clardy in this case.

CONCLUSION

The plaintiffs have failed to carry their burden to demonstrate to this court that there exist genuine issues of material fact as to their claims against the defendants in this case. The plaintiffs are not entitled to the entry of a judgment as a matter of law and their motion for summary judgment shall be denied. Further, the undersigned again declines to impose upon the plaintiff Kenneth Clardy the burden of equitable subrogation.

A separate order in accordance with this opinion shall issue this day.

THIS the _____ day of March 1997.

_____
United States District Judge

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BENEFIT PLAN and ADVANCED
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ORDER DENYING PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT

Pursuant to a memorandum opinion issued this day, it is hereby ORDERED THAT:

1) the motion of the plaintiffs for the entry of summary judgment is hereby DENIED. Further, this court makes no determination as to what extent, if any, the plaintiffs' recovery should be reduced in light of any mitigation of damages or in order to prevent them from obtaining a double recovery.

SO ORDERED, this the _____ day of March 1997.

_____
United States District Judge